

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1177 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

KHATAU JETHALAL THAKKAR

Appearance:

MR HS MUNSHAW for Petitioner
None present for Respondent despite service.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/11/1999

ORAL JUDGEMENT

1. Heard the learned counsel for the petitioner and
perused the judgment of the Extra Assistant Judge, Bhuj,
District Kutch in Civil Misc. Appeal No. 70 of 1995,
annexure 'A'.

2. This revision application was admitted by this
court on 7th August, 1995 and interim relief in terms of
para-7 (C) has been granted. Para - 7(C) reads as under:

To stay the implementation, execution and operation of the impugned order dated 7th April, 1995 passed by the learned Extra Assistant Judge, Bhuj Dist. Kutch in Civil Misc. Appeal No. 70 of 1995 annexed at annexure 'A' to this application, during the pendency of admission, hearing and final disposal of the application, by way of an interim relief in the interest of administration, larger interest of employees of the petitioner- Corporation who are waiting for their allotment of the staff quarter as well as in the interest of justice.

3. The facts of the case are that the respondent was the employee of the Corporation working in the cadre of Conductor. When he was posted at Rapar, he was allotted staff quarter. He came to be dismissed on misconduct under the order dated 12th May, 1984 of the Corporation. After dismissal, he was called upon to vacate the quarter but he has not vacated the quarter. However on 13th December, 1994, the quarter was vacated. Under the order dated 8th March, 1995, it was decided to recover rent of the quarter at the rate of Rs.60/= p.m. w.e.f. June, 1984 to May, 1992 as per the General Standing Order No.864 and Rs.800/= p.m. w.e.f. June, 1992 to December, 1994 as per the General Standing Order No. 975 of 1992. The total amount comes to Rs.26594/= out of which Rs.3966/= was adjusted as amount paid earlier by the respondent. Against this order of the Corporation, the respondent filed an appeal and the detailed affidavit has been filed by the Corporation. Under the impugned order, the interim relief has been granted pending the hearing and the disposal of the appeal. The appeal is of the year 1995 and by now possibly it would have been disposed of. Learned counsel for the petitioner is not in a position to make any statement in this respect.

4. Having heard the learned counsel for the petitioner and going through the order of the appellate court, I do not find any justification what to say any merits in the prayer made by the respondent for grant of interim relief pending the appeal. After his dismissal he has no right whatsoever to retain the possession of the quarter. He should have voluntarily handed over the possession but it has not been done and the Corporation has all the right to recover the rent for the period he unauthorisedly occupied this quarter. The rent has been charged at the rate of Rs.60/= p.m. for the period from June, 1984 to May, 1992 as per the standing order of the Corporation and then at the rate of Rs.800/- p.m. from June, 1992 to December, 1994 as per the standing order.

The appellate court has not considered this aspect of the matter and it has proceeded as if in all the cases where litigant files an appeal, interim relief has to be granted. This is misconception of law. The case has to be considered on merits and only in case where the Court is satisfied that the litigant has a *prima-facie* case and in case interim relief is not granted irreparable injury will be caused and further balance of convenience also favours grant of interim relief it can be granted but not as a matter of rule or right. Leaving apart that the respondent has no *prima-facie* case otherwise also it is a money matter and in such matters it is difficult to accept that if the litigant is not protected he will suffer any irreparable injury. Moreover, unauthorisedly this quarter has been retained by the respondent and no protection could have been granted. This court has stayed this order and rightly so as on the face of it is a perverse order. If ultimately, the respondent succeeds in the litigation then court has all the powers to give direction to the Corporation to pay him the amount recovered from him. In these facts, there is no question of any irreparable injury to be caused to the respondent on denial of the interim relief by the appellate court. In the facts of this case, where the respondent has illegally retained the quarter of the Corporation after his dismissal, balance of convenience also does not favour for grant of interim relief.

5. In the result, this revision application succeeds and the same is allowed. The order dated 7th April, 1995 passed by the learned Extra Assistant Judge, Bhuj, Dist. Kutch in Civil Misc. Appeal NO. 70 of 1995 is quashed and set aside. Rule is made absolute. As none put appearance of the respondent, no order as to costs.

zgs/-